

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

FILED

OCT 17 2011

WILLIAM B. GUTHRIE
Clerk, U.S. District Court
By Deputy Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
DANIEL WELLS HERRIMAN,)
)
Defendant.)

Case No. CR-11-063-JHP

FINDINGS AND RECOMMENDATION
ON DEFENDANT'S COMPETENCY

On August 18, 2011, this Court ordered *sua sponte* that Defendant submit to a mental competency evaluation based upon the allegations in the Indictment and the evidence presented at the hearing on that date. On October 17, 2011, this Court conducted a hearing with regard to Defendant's mental competency, in light of the receipt of the competency evaluation by the Federal Detention Center located in Englewood, Colorado. The evaluation was conducted by Jeremiah Dwyer, Ph.D., a forensic psychologist. Dr. Dwyer's evaluation made pursuant to 18 U.S.C. § 4241 concluded "there is no objective evidence to indicate that Mr. Herriman currently suffers from symptoms of major mental disorder . . . , psychotic disorder . . . , or an organic disorder, that would impair his present ability to understand the nature and consequences of the court proceedings against him, or his ability to properly assist counsel in his defense." Dr. Dwyer found Defendant must continue his medication regimen in order to maintain her current level of functioning.

At the hearing, Defendant and his counsel were present along with the Assistant United States Attorney. Other than Dr. Dwyer's report, no further evidence was presented by either party. Further, Defendant and his counsel did not object to the finding of competency contained in the report and offered no additional evidence on the issue of competency. Based upon the lack of objection to the report's findings by either the Defendant or the Government, this Court made a preliminary finding of competency and proceeded with Defendant's arraignment and detention hearings.

IT IS THEREFORE THE RECOMMENDATION OF THIS COURT that it be the finding of the Court by a preponderance of the evidence that Defendant Daniel Wells Herriman does not presently suffer from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

The parties are herewith given fourteen (14) days from the date of the service of these Findings and Recommendation to file with the Clerk of the court any objections, with supporting brief. Failure to object to the Findings and Recommendation within fourteen (14) days will preclude appellate review of the judgment of the District Court based on such findings.

IT IS SO RECOMMENDED this 17th day of October, 2011.

A handwritten signature in black ink, appearing to read "Kimberly E. West", written over a horizontal line.

KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE